

**From:** Bonnie Smith/R3/USEPA/US  
**Sent:** 11/2/2012 10:01:51 AM  
**To:** David Bloomgren/DC/USEPA/US@EPA; Julia Valentine/DC/USEPA/US@EPA; Dayna Gibbons/DC/USEPA/US@EPA  
**CC:** Angela McFadden/R3/USEPA/US@EPA  
**Subject:** Pittsburgh Post-Gazette - you were contacted about re: Probe of DEP water testing reports + story from another paper

## State representative calls for probe of DEP water testing reports

November 1, 2012 6:17 pm

By Don Hopey / Pittsburgh Post-Gazette

The Pennsylvania Department of Environmental Protection has created incomplete lab reports and used them to dismiss complaints that Marcellus Shale gas development operations have contaminated residential water supplies and made people sick, according to court documents and other sources.

As a result, state Rep. Jesse White, D-Cecil, today called on state and federal law enforcement agencies to investigate the DEP for "alleged misconduct and fraud" described in sworn depositions in a civil case currently in Washington County Common Pleas Court.

"This is beyond outrageous," Mr. White said in a press release. "Anyone who relied on the DEP for the truth about whether their water has been impacted by drilling activities has apparently been intentionally deprived of critical health and safety information by their own government."

The DEP quickly responded Mr. White's statements in an email to the Post-Gazette.

Department spokesman Kevin Sunday said the DEP's testing lab received a "glowing" review last year in a peer review by the Association of Public Health Laboratories.

He added, "Jesse White is ideologically opposed to responsible drilling regulations which is evidenced by, among other things, his vote against Act 13," a state law that regulates Marcellus Shale drilling and gas production.

"The battery of analyses we order during investigations are thorough and give us the results we need to make sound determinations, which we fully stand behind," Mr. Sunday said.

"DEP takes very seriously instances where we do determine gas migration has occurred from drilling -- this administration issued the largest single civil penalty in the history of the state's oil and gas program last year for such a case."

Mr. White's call for an investigation came after the release of two depositions of DEP employees, one of whom, Taru Upadhyay, the division director of DEP's Bureau of Laboratories, said the department's lab reports to property owners didn't contain a full array of contaminants found by the lab's testing.

Mr. White said there's no excuse for withholding some of the water test results because they could hold the key to residents' water supply problems.

"If these allegations are true, there needs to be a thorough and objective investigation to determine if

someone belongs in a jail cell," he said.

In her deposition, Ms. Upadhyay said the department's oil and gas division directed the lab to generate water test reports to homeowners that omitted the full menu of findings for heavy metals, including lithium, cobalt, chromium, boron and titanium, some of which are human carcinogens, as well as volatile organic compounds that are associated with hydraulic fracturing fluids.

Those metals are Marcellus Shale markers, found in the shale layer a mile or more underground in Pennsylvania. They are released by hydraulic fracturing or "fracking" of the shale and can be carried by flowback fluids to the surface.

Finding them and certain volatile organic compounds in the water test results would link contamination of groundwater to gas well drilling and fracking operations, said John Smith, an attorney with Smith Butz, a firm representing eight people in the Washington County case against Range Resources and 12 of its subcontractors. Their case contends that they face serious health problems and increased cancer risk due to exposure to toxic chemicals in their air and well water near Range's Yeager drill site in Amwell.

"Despite these significant health consequences, the DEP purposely never considered information concerning all of these metals in each of the plaintiffs' water supplies before making any of its determinations and purposely failed to alert the plaintiffs to their presence," said Mr. Smith in a court filing Wednesday.

Kendra Smith, another Smith Butz attorney, today sent a 10-page letter to DEP Secretary Michael Krancer about the incomplete test results and requested a review of the practice. She sent copies of the letter to state Attorney General Linda Kelly; the U.S. Environmental Protection Agency, Region III; David Hickton, U.S. Attorney for the Western District of Pennsylvania; and five state legislators.

According to the deposition transcript, Ms. Upadhyay said the DEP's state laboratory tests water samples for a full battery of contaminants, but at the direction of the department's Office of Oil and Gas Management, limits the number of contaminants reported to the oil and gas division and the property owner.

In a second deposition filed in the case, John Carson, a DEP water quality specialist, said a special lab code for Marcellus Shale water contamination complaints is used statewide. He also said the department failed to provide its water quality specialists with training to help them interpret the lab reports and identify contaminants that could signal Marcellus Shale-related impacts.

A Post-Gazette review of DEP water quality reports generated under the department's "942 Suite Code" found that those reports didn't disclose all of the contaminants found in well water samples. The water complaints in these cases were dismissed because the abbreviated reports did not support the property owner complaints in Amwell, Washington County, the Woodlands area in Butler County, and Dimock in Susquehanna County.

Ms. Upadhyay's statements came in response to questions from Ms. Smith and are contained in a 336-page transcript of her deposition taken Sept. 26 for an Environmental Hearing Board case. The case, brought by Loren Kiskadden of Amwell, alleges that DEP's investigation of his well-contamination complaint was inaccurate and incomplete.

The depositions were filed as supporting documents in the related Washington County Court case. In that case, four homeowners, including Mr. Kiskadden, who live near the Yeager well site, allege their private water supplies were contaminated and they suffered a variety of health problems.

Range, owner of the Yeager well site, has denied any responsibility for any contamination from its operations, which included three wells, a 13 million-gallon impoundment and a drill cuttings pit.

---

## **Beaver County Times: DEP water reports under new scrutiny**

**By Rachel Morgan Shalereporter.com | Posted: Thursday, November 1, 2012 11:45 pm**

Testimony by a high-ranking state Department of Environmental Protection official reveals the agency may have intentionally left out part of the results of water testing in relation to Marcellus shale drilling.

According to a press release from the office of State Rep. Jesse White, D-Allegheny/Beaver/Washington, the sworn testimony of DEP Bureau of Laboratories Technical Director Taru Upadhyay revealed the DEP used a computer code system that intentionally left out a portion of test results for residents who were concerned their water had been contaminated by nearby drilling.

"This is beyond outrageous," White said. "Anyone who relied on the DEP for the truth about whether their water has been impacted by drilling activities has apparently been intentionally deprived of critical health and safety information by their own government."

Upadhyay, employed by the DEP since 1994, was deposed in a lawsuit alleging nearby natural gas drilling operations contaminated drinking-water supplies and caused health issues in Washington County.

According to White, the court transcripts showed the DEP lab conducted water tests using an EPA-approved standard -- the DEP employee who requested the testing would use a "Suite Code" that limited the information coming back from the DEP lab to the DEP field office, and thus the property owner. The suite codes used were Suite Code 942, 943 and 946.

In short, if Suite Code 942 was used, the DEP would test for 24 contaminants, but list only eight of those in the report given back to the resident. The eight metals reported were: barium, calcium, iron, potassium, magnesium, manganese, sodium and strontium.

State DEP spokesman Kevin Sunday said Thursday night that these suite codes were developed specifically to test for certain types of contamination -- namely, to indicate Marcellus shale drilling-related contamination.

"If you're looking at runoff from a mine site, that is different from looking at runoff from a landfill, and different from contamination due to hydraulic fracturing," he said. "These are a Marcellus shale specific list of parameters that are most indicative to that contamination."

Using the same suite, the report would not include results for silver, aluminum, beryllium, cadmium, cobalt, chromium, copper, nickel, silicon, lithium, molybdenum, tin, titanium, vanadium, zinc and boron.

When asked whether this was because the list of aforementioned substances weren't indicative of Marcellus shale-related contamination, Sunday didn't say for sure.

"I wouldn't go that far," he said.

Sunday also said that in order to deduce contamination brought on by Marcellus drilling, there are a plethora of other tests done.

"We have a full set of analysis that we run and gives us a very clear indication whether there was any contamination from drilling," he said. This analysis includes a pre-drilling baseline water test, testing for volatile organic compounds and hydrocarbons, an examination of the geology, the distance to any drilling operations, and whatever other site-specific factors there may be, he said. Suite 943 and 946 also include additional testing parameters.

"What the Marcellus shale (drilling) has put a spotlight on is the issue that we see with private water supplies, with the extent of some background level of contamination in the water," Sunday said.

But White still disagrees with the DEP releasing only part of its findings in the reports.

"There is no excuse whatsoever to justify the DEP conducting the water tests and only releasing partial information to residents, especially when the information withheld could easily be the source of the problem," White said. "This goes beyond incompetence; this is unlawful and reprehensible activity by the DEP."

In a letter to DEP Secretary Michael Krancer from Kendra L. Smith, a resident's lawyer in the Washington County case, Smith alleges that her team "was immediately drawn to the possibility that the PA DEP Bureau of Laboratories was failing to forward complete test results, and in turn the PA DEP Oil & Gas Division was reviewing and denying claims of impacts of water based on incomplete test results."

Smith also said that Suite Code 942 "direct(s) the Bureau of Laboratories to only print or report certain results of its full analysis, despite the lab performing and reviewing the results of all parameters tested for."

In her deposition, Upadhyay said that the DEP lab reports only those contaminants the client specifically requests.

Sunday agreed.

"Our investigators ask the lab to screen for parameters they need to determine water contamination," he said.

And when asked why the DEP doesn't just release all findings of their tests since they're already done, Sunday said, "We're not out to do a public health analysis of private water supplies."

White said that any Pennsylvania resident who receives water-quality test results from the DEP should look for the number 942, 943 or 946 as a "Suite Code" or "Standard Analysis" on their results and contact his district office at (724) 746-3677 for more information.

This isn't a technicality, and it isn't something which can be ignored," White said. "We are talking about people's health, safety and welfare. The sworn testimony from inside the DEP about a scheme to withhold vital information about potential water contamination is truly alarming. An investigation is necessary to answer these serious allegations."